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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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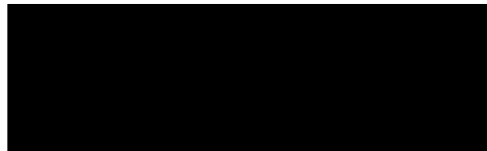
ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

FILE: [REDACTED]
EAC 01 091 50973

Office: Vermont Service Center

Date: AUG 15 2003

IN RE: Petitioner:
Beneficiary:



APPLICATION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

IN BEHALF OF PETITIONER: Self-represented

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Mexico who is seeking classification as a special immigrant, pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as the battered spouse of a citizen of the United States.

The director determined that the petitioner failed to establish eligibility for the benefit sought because she was divorced from her allegedly abusive U.S. citizen spouse for more than two years prior to the filing of the self-petition. The director, therefore, denied the petition.

On appeal, the petitioner asserts that her lawyer informed her that additional changes to the law may apply to her. She further asserts that during her marriage, she was the victim of repeated domestic physical abuse. She states that she visited the INS repeatedly, each time talking to a different representative, and each representative told her that she was not eligible for "citizenship" based on domestic abuse because she was already divorced. She further stated that she was informed that a year or two later, that law changed and it is now acceptable to be divorced and receive citizenship based on domestic abuse; therefore, she reapplied under this new change of law.

8 C.F.R. § 204.2(c)(1) states, in pertinent part, that:

(i) A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

(A) Is the spouse of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided in the United States with the citizen or lawful permanent resident spouse;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character;

(G) Is a person whose deportation (removal) would result in extreme hardship to himself, herself, or his or her child; and

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The petition, Form I-360, shows that the petitioner arrived in the United States on June 10, 1981. However, her current immigration status or how she entered the United States was not shown. The petitioner married her U. S. citizen spouse on June 19, 1985 in Houston, Texas. The petitioner and her spouse were divorced on July 15, 1993. On February 7, 2001, a self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her U. S. citizen spouse during their marriage.

8 C.F.R. § 204.2(c)(1)(ii) states, in pertinent part:

The self-petitioning spouse must be legally married to the abuser when the petition is properly filed with the Service. A spousal self-petition must be denied if the marriage to the abuser legally ended through annulment, death, or divorce before that time. After the self-petition has been properly filed, the legal termination of the marriage will have no effect on the decision made on the self-petition.

On October 28, 2000, the President approved enactment of the Violence Against Women Act, 2000, Pub. L. No. 106-386, Division B, 114 Stat. 1464, 1491 (2000). Section 1503(b) amends section 204(a)(1)(A)(iii) of the Act so that an alien self-petitioner claiming to qualify for immigration as the battered spouse or child of a United States citizen is no longer required to be married to the alleged abuser at the time the petition is filed as long as the petitioner can show a connection between the legal termination of the marriage within the past two years and battering or extreme cruelty by the United States citizen spouse. *Id.* section 1503(b), 114 Stat. at 1520-21.

The director determined that the petitioner failed to establish eligibility for the benefit sought because she was divorced from her U.S. citizen spouse for more than two years prior to the filing of the self-petition. He maintained that there is no provision of law whereby an alien may self-petition based on a former spousal relationship when more than two years have passed between the date of the legal termination of the marriage and the date of filing of the Form I-360 self-petition.

Although the divorce of the two parties prior to the filing of the petition is no longer a bar as long as there is a connection between the legal termination of the petitioner's marriage within the past two years and battering or extreme cruelty by her spouse, the record reflects that the petitioner and her citizen spouse were divorced on July 15, 1993, and the petitioner filed the instant petition on February 7, 2001, more than two years after the divorce was final. The director is correct in his conclusion. While the petitioner, on appeal, asserts that she did not timely file because she was told by a Service representative that she was not eligible for "citizenship" based on domestic abuse, there is no evidence in the record that the petitioner did, in fact, file a Form I-360 petition within the two years after her divorce from her alleged abusive spouse.



The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the appeal must be dismissed.

ORDER: The appeal is dismissed.